IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

APPEAL FROM ORDER NO.1032 OF 2005
WITH
CIVIL APPLICATION NO.1236 OF 2005

Rajabali Dhoodhnath Mishra & Anr. ...Appellants.
Vs.
Smt.Baby Shankar Pansare & Ors. ...Respondents.
....
Mr. Ditendra Mishra for the Appellants.
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CORAM : DR. D.Y. CHANDRACHUD, J.

December 13, 2005.

P.C.:

Upon the restoration of the Appeal from Order, it is taken on board for admission.

The Learned Trial Judge has granted relief to the original Plaintiff in terms of prayer clauses (b) and (c) of the Notice of Motion. By prayer (b), an injunction has been granted against the Appellants who are the Second and Third Defendants to the suit from reconstructing the demolished portion of the suit premises situated at Survey No.255, Hissa No.677, Pansare Chawl, Malad. By the grant of prayer (c), an injunction has been granted, restraining the Municipal Corporation from issuing permission to

the Appellants without the consent and knowledge of the Plaintiff. The Plaintiff is the owner of these structures situated at Survey No.255, Hissa No.677. The case of the Plaintiff is that the Appellants unauthorisedly constructed the suit structures without permission upon which several letters were written to the municipal authorities. Ultimately, on 15th July 2004, the Municipal Corporation demolished a part of the unauthorised construction. The Plaintiff was informed by the Municipal Corporation on 19th July 2004 that action could not be completed against the Appellants herein since they have obtained an order of injunction from the City Civil Court. The Learned Trial Judge has noted that the Plaintiff verified the details of the suit and it was found that there was no order of injunction in subsistence. At the hearing of this Appeal from Order, I have enquired from the Appellants as to whether any order of injunction has been issued in the suit instituted by the Appellants to which Counsel fairly answered in the negative. The Learned Trial Judge has noted that the Plaintiff is a widow with two daughters and that she is the owner of the premises. The Appellants had exceeded the permission granted by the Municipal Corporation and extended the construction which came to be demolished by the Corporation. In these circumstances, there is no merit in the Appeal from Order which is accordingly dismissed.

However, it would be open to the Appellants to apply before the Trial Court for the expeditious disposal of the suit and if such an application is made, the same shall be considered by the Trial Court having regard to the exigencies of the board.

In view of the disposal of the appeal, the Civil Application does not survive and is accordingly disposed of.

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